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ABSTRACT

This article reports a study of the public policy implications of publicly supported primary and secondary single-sex education in the United States. Twenty-two public intellectuals concerned with educational issues were interviewed. Subjects were either academic researchers, government officials and legislators, directors of public interest groups and educational associations or practicing lawyers and legal scholars. In general, informants expressed strong hesitations about public K-12 single sex education, and stressed the need for an overhaul of co-education as a solution to educational problems. Some informants, however, believed that the potential pedagogical benefit of single-sex K-12 public education was worthy of further study. Most subjects urged a stricter enforcement of Title IX (which prohibits discrimination on the basis of sex in educational institutions which receive Federal funding) to preserve and further aims of gender equity. Responses are included from the informant groups on issues of creating equal outcomes from an educational system, the role of Federal law, the level of scrutiny toward gender-based classifications in education, the changing trend toward single-sex K-12 education, and public policy implications of single-sex education. The legal aspects of single sex education, including an analysis of statutory, regulatory and case law, are considered. An appendix provides a section-by-section analysis of Title IX. (Contains 21 references.) (JPB)

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Project Report

School of International and Public Affairs
Graduate Program in Public Policy and Administration

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Single-sex Education: A Public Policy Issue

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Preface

In the Spring of 1995, a group of twelve students enrolled in Columbia University's Graduate Program in Public Policy and Administration, participated in a Workshop in Applied Policy Analysis. Their client, the Center for Advanced Study in Education at the City University of New York Graduate Center, asked them to engage in an in-depth study of the public policy implications of publicly supported primary and secondary single-sex education in the United States. This report represents the Workshop's findings.

The Introduction frames the broad issues surrounding publicly supported single-sex education. It summarizes some of the research and provides an overview of current events which have brought this issue into public view.

The Methodology outlines the research methods and guidelines employed by the Workshop participants in developing and conducting interviews and in formulating a structure for the responses.

The Statutory, Regulatory and Case Law Analysis examines the legal underpinnings of the topic.

The Results in Brief and Implications provide the primary substance of this report.

The Group Reports summarize the individual task force findings.

Introduction

Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex, and seeks to rectify perceived gender-based inequalities in educational institutions which receive Federal funding. Examples of sex discrimination covered under Title IX include different or unequal treatment of students in instructional style, curriculum and athletics. Title IX also prohibits most publicly funded single-sex instruction because it has been considered an obstacle to achieving equitable educational outcomes.

In its 1994 report entitled, *How Schools Shortchange Girls*, The American Association of University Women (AAUW) cites many examples of publicly funded, K-12 co-educational classroom activity and curricular approaches which have served to lessen girls' educational achievement. Such examples included the failure of teachers to "call on" girls as often as boys, their reluctance to encourage girls' development in math and science skills, and the use of curriculum which reinforces traditional gender roles. The report concluded that the schools' current failure to provide comparable opportunities for boys and girls results from an inability on the part of teachers and administrators to address the needs of female students. The report strongly recommends a strict enforcement of Title IX for improved educational and equality outcomes. Although some individual school districts are currently experimenting with all-girl classes, particularly in math and science, the AAUW rejects such an approach because it treats girls as if they cannot compete academically with boys. The AAUW also maintains that sex-segregated schools often result in the allocation of fewer educational resources to girls. Instead, the AAUW supports better teacher and administrator training and a reformed curriculum.

Senator John C. Danforth of (R - Missouri) held a different a view. In 1994 he sought to amend Title IX to allow for a demonstration of public primary and secondary single-sex schools. The amendment would have allowed single-sex classes in a limited number of school districts, since the Senator believed that single-sex classes have resulted in positive outcomes for girls and also for minority male students.

Recent highly publicized legal cases, involving military institutions of higher education whose admissions policies are not covered under Title IX, serve nonetheless to illustrate some of the contentious issues in the legal interpretation of single-sex education.

The case of the Virginia Military Institute (VMI), an all-male publicly supported college, reintroduces the concept of "separate but equal" in a gender context. A recent decision in a Federal court has allowed the State of Virginia to establish a separate all-female leadership program, the Virginia Women's Institute for Leadership at Mary Baldwin College, a four-year all-female college. The Institute is expected to serve those women who have been denied admission to VMI on the basis of its male-only policy.

South Carolina's all-male Citadel has refused either to admit women as full-time students or to provide a program similar to the Women's Institute. Lawyers for the plaintiff Shannon Faulkner contend that a separate women's program (such as the Virginia Women's Institute for Leadership) promotes sex-based generalizations and stereotypes.

Moreover, the decaying infrastructure and social problems which characterize so many urban areas compromise the ability of urban schools to address their students' needs. Minority male students are seen as particularly at-risk because of their high drop out rates. In response, the African-American community has begun to explore single-sex education as an alternative, and Milwaukee and Baltimore have already established all-male academies. NOW Legal Defense and Education Fund's Project on Equal Education Rights (PEER) has argued against these all-male academies, stating that such schools set a dangerous precedent by superseding important civil rights protections. PEER also holds that the sex segregation of students rests on a faulty premise: that African-American males' educational opportunities are hindered by the presence of African-American females.

This report will expand upon these issues by examining the opinions of a number of public intellectuals concerned with educational issues who are associated with one of the following four groups: academic researchers, government officials and legislators, directors of public interest groups and educational associations, and practicing lawyers and legal scholars. Many of those interviewed are also interested in the various aspects of gender equity in education.

Methodology

Information for this study was obtained through interviews and document review. At a preliminary stage of the investigation, workshop participants discussed the options of conducting a series of case studies involving examples of single-sex education or of conducting random samples of the populace. Since the focus of this project, however, was the determination of the opinions and views of persons possessing in-depth understanding of the issues surrounding single-sex education, the workshop participants decided on the use of intensive interviewing with a stratified sample of informants.

Unlike surveys, questionnaires, and polls, intensive interviewing involves an open-ended dialogue, in which the interviewer probes for more and more detail from the person being interviewed. In this type of interviewing, the interviewers tailor their questions to build upon the background and experience of those interviewed, the informants. A basic manual that proved helpful in this regard was Jerome T. Murphy's Getting the Facts: A Fieldwork Guide for Evaluators & Policy Analysts (Santa Monica, CA: Goodyear Publishing Co., 1980). Of even greater value was the workshop session presided over by Ronald J. Grele, an historian, who directs Columbia University's Oral History Research program. Dr. Grele explored with the workshop's participants the need for prior knowledge of the informant, accuracy in reporting, and other relevant matters.

Once the primary methodology was determined, the next task was the selection of the informants. Individual informants were chosen based on the client's recommendations and on the workshop participants' analysis of the contributions of key personnel in the fields of law, education, and public policy. Initially, the informants were categorized into four groups: academic researchers in the education field; government officials and legislators; directors of public interest groups and educational associations; and practicing lawyers and legal scholars involved in cases of gender equity and women's rights. Workshop participants were then divided into four interview teams, each headed by a task leader responsible for communicating the team's findings to the entire workshop.

Though a careful selection of the informants, the workshop participants hoped to achieve a balance of opinion, a match between those experts who favored single-sex K-12 classes and, conversely, those who favored co-educational ones. Allowance, of course, was made for informants who would take no definitive position on the topic. However, the achievement of this balance was not possible. Some individuals prominently identified with either one side of the issue or the other declined to be interviewed. The response of other informants, which the participants had anticipated to fall out on one side of the question or the other, did not necessarily live up to prior expectations. But the wealth of information realized from those individuals who did consent to be interviewed undeniably helped the participants to frame the debate, even though no definitive conclusions for either side were reached.

Each potential informant received a letter of introduction from one of the workshop participants, along with a description of the project and an identification of its sponsor. The letter indicated that it would be followed by a telephone call to arrange a specific time for

the interview. In some cases, to ensure speedy delivery letters were faxed rather than mailed.

Six general questions were framed by the participants for all of the informants. These questions highlighted the fundamental issues involved in single-sex education. Within this general framework, each interview team added additional questions specific to its category of informants. Prior to conducting the interviews, workshop participants had read legal briefs or scholarly studies written by the informants. This background information proved very useful in eliciting response from those informants whose prior publication record could be examined. The interviews of all the informants, including those without a publication record, were highly individualized so as to elicit the most relevant information possible. The intensive interviewing format allowed the interviewers considerable flexibility and enabled them to use the informants' answers in the context of the final report as a way to frame the on-going debate concerning single-sex education.

Although proponents of intensive interviewing recommend face-to-face interaction between the interviewer and the informant, participants in the workshop conducted a number of the interviews by telephone. The majority of interviews were tape recorded and transcribed by the interviewer. Most informants were interviewed only once; in some cases, when further questions arose after the interview was over, a second contact was made for clarification purposes. In a few cases, where ambiguities were still at issue, the informant was given a transcript of his or her interview to review and revise, if revision seemed necessary.

Statutory, Regulatory and Case Law Analysis

The early 1970s was an important time for women in the United States; a time when women were demanding the same legal rights as men. These rights included equal pay, equal opportunity, and equal employment. Congress heard these demands and, in March 1972, passed the Equal Rights Amendment (ERA), and sent it to the states for ratification. The ERA provided that "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex."[1] [In 1982 the ERA was defeated after failing to be ratified by the necessary three-fourths of the states.]

Women were also demanding equality in education. In 1972 Congresswoman Edith Green (D-OR) and Senator Birch Bayh (D-IN) proposed legislation in the U.S. House and Senate, respectively, to eliminate sex discrimination in educational institutions receiving Federal financial assistance. The legislation took the form of an amendment to the omnibus education bill of 1972. This tactic proved to be successful and the amendment was adopted as Title IX of the Education Amendments of 1972.[2]

Title IX of the Education Amendments of 1972 (P.L. 92-318)

Title IX of the Education Amendments of 1972 was modeled after Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin in programs receiving Federal financial assistance.[3] Title IX prohibits discrimination on the basis of sex in all Federally funded education programs. The Senate sponsor of the bill, Senator Bayh, during Senate debate on the legislation, stated that its main purpose was to close the loophole contained in Title VI of the Civil Rights Act to include discrimination on the basis of sex. "In order to close this loophole, my amendment sets forth prohibition and enforcement provisions which generally parallel the provisions of Title VI."[4]

Two broad provisions of Title IX are of particular import.

The Anti-Discrimination Clauses

The Congressional intent of the Title IX is quite clear: to guarantee equal educational

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[1]Vernon Van Dyke, Equality and Public Policy (Chicago: Nelson-Hall Publishers, 1990), 83.

[2]The Education Amendments of 1972 amended the Higher Education Act of 1965.

[3]P.L. 88-352.

[4] Statement of Senator Bayh, 92d Cong., 2d Sess. Congressional Record, Vol. 118, Pt. 4 (Feb. 15, 1972), S3937.

opportunities for women.[5] However, equal educational opportunities cannot exist in an environment which is marred with sex-based discrimination. Such discrimination might come in the form of different treatment of girls and boys, sexual harassment or curriculum which reflects sex-based stereotypes and reinforces traditional gender roles.

Exempted from the anti-discrimination clauses were those educational institutions that are under religious auspices and those whose primary purpose is the training of individuals for the military service and the merchant marine of the United States. All other educational institutions, both public and private, are subject to the anti-discrimination clauses of Title IX. It is important to note, however, that there is a distinction between the anti-discrimination clauses and the admissions clause.

The Admissions Clause

Although nearly all educational institutions are subject to the anti-discrimination clauses of Title IX (except those specifically listed above), only certain institutions are bound by the admissions clause of Title IX. Specifically, in regard to sex classification in admissions policies of educational institutions, the Bayh amendment applied only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education. (Even this later category was subject to qualification, however, since those public undergraduate institutions having a long-term policy of single-sex education were to be also exempt.) In general, however, Bayh considered these higher educational institutions of the utmost importance, since traditionally they had been open only to men. Regarding the then-existing primary and secondary schools (both public and private), Senator Bayh exempted them from the admissions clause provision.

His reasoning is explained by statements he made at the time of the Title's consideration. Much to his surprise, Senator Bayh discovered that the U.S. Office of Education could not furnish him with a clear statement as to the extent of already existing primary and secondary schools with single-sex enrollments. Rather than disrupt the whole U.S. school situation, he then decided it would be appropriate to exempt the admissions policies of these schools from Title IX, until further study was conducted. He hoped that this admissions policies exemption would be rescinded at a later date and said, "Congress can make a fully-informed decision on the question of which -- if any -- schools should be exempted after the Office of Education had provided appropriate statistics."[6]

No study was ever undertaken and no statistics were ever collected. To this day, the exemption regarding the admissions policies of publicly-funded single-sex K-12 schools remains in effect. Single-sex public K-12 schools which were created before passage of Title IX still exist today (though some have faced constitutional battles) and new single-sex schools may possibly be able to withstand Title IX challenges.

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[5]Ibid.

[6]Congressional Record, 92d Cong., 2d Session, Vol. 118, Pt. 4 (February 15, 1972), S3927. The requirement that the US Department of Education conduct a study of the admissions policies of US high schools was not included in the final version of the legislation. It would appear that no such study was ever conducted.

Regulations Promulgated under Title IX

In July 1972, the Office of Civil Rights in the U.S. Department of Health, Education and Welfare (HEW) was given responsibility for promulgating the regulations under Title IX. HEW, however, did not issue final regulations until July 1975.[7] The cause of the delay was due to confusion on the part of HEW as to the Congressional intent of the law. Because there was no accompanying House or Senate Report for Title IX, HEW had little material on which to interpret its regulations. A frenzied three-year period ensued, as various interest groups pressured HEW to issue rules to their benefit.

Much of the controversy over Title IX regulations concerned their impact on college athletic programs. At issue was whether intercollegiate revenue-producing sports such as football and basketball should be covered by regulations promulgated under Title IX. Arguing on one side of the issue were the National Collegiate Athletic Association and the American Football Coaches Association; counter arguments were raised by the other side, women's groups, public interest and student associations and education groups. In June 1974, HEW issued its first set of regulations under Title IX. Under a new procedure, these regulations were subject to a Congressional veto through concurrent resolution. These proposed regulations incurred great opposition and, due to a concern that they might be vetoed, HEW submitted new regulations a year later on June 4, 1975. After some debate, this latter set of regulations went into effect on July 21, 1975. They were subsequently amended, and final regulations were issued on May 9, 1980.[8]

The regulations promulgated under Title IX fall into six main categories: general matters related to discrimination on the basis of sex; coverage; admissions; treatment of students once they are admitted; employment; and procedures.[9]

The most important regulation pertaining to single-sex instruction in primary and secondary schools is section 106.34, entitled Access to Course Offerings. Under this section, single-sex classes or activities are not allowed in co-educational environments except in certain circumstances. Explicit exceptions are made for physical education classes involving activities of bodily contact and choruses based on vocal range. Sex-education classes may be segregated by sex, but are not required to do so. In other words, most single-sex classes are prohibited under Title IX.

In 1978, HEW's enforcement of Title IX came under the purview of the NOW Legal Defense and Education Fund's Project on Equal Education Rights (PEER). PEER's report, Stalled at the Start, charged that there were a number of inadequacies in HEW's Office of

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[7]Anne N. Costain, "Eliminating Sex Discrimination in Education: Lobbying for Implementation of Title IX," Policy Studies Journal 7 (Winter 1978): 189.

[8]Ibid.

[9]An Annotated Summary of the Regulation for Title IX Education Amendments of 1972, NOW legal Defense Fund (Chevy Chase, MD: The Mid-Atlantic Center, September 1993).

Civil Right's process of dealing with complaints of sex discrimination. In addition to PEER's Stalled at the Start, the National Advisory Council of Women's Educational Program issued The Unendorsed Law: Tile IX Activity by Federal Agencies other than HEW, also in 1978. Both reports contributed to a growing consensus that enforcement of Title IX was haphazard and lax.[10]

The Equal Educational Opportunities Act

Two years after passage of Title IX, Congress passed the Equal Educational Opportunities Act (EEOA) as part of the Elementary and Secondary Education Amendments of 1974. It was drafted to ensure that all children enrolled in primary and secondary public schools be entitled to equal educational opportunity without regard to race, color, sex, or national origin, and that the neighborhood is the appropriate basis for determining public school assignments.[11] Many individuals interested in gender equity issues thought that the legislation would serve to sharpen the intent of Title IX with respect to primary and secondary admissions policies.

Unfortunately, the legislation failed to address the sex classification issue adequately. The language of the legislation was inconsistent when it came to defining whether segregation of the sexes in school environments constitutes a denial of equal educational opportunity. This inconsistency might have resulted from the fact that the EEOA's central concern was the use of busing to achieve racial equality. Unfortunately, it is not possible to determine whether the legislation's inconsistency resulted from a simple oversight or was brought about by a deliberate action.

The inconsistency regarding sex segregation can be seen in the bill's language. Section 1701 specifically states:

> No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by--
>
> (a) the deliberate segregation by an educational agency of students on the basis of race, color, or national origin among or within schools; [note: the word "sex" does not appear here.]
>
> (b) . . . .
>
> (c) the assignment of an educational agency of a student to a school, other than the one closest to his or her place of residence within the school district in which he or she resides, if the assignment results in a greater degree of segregation of students of the basis of race, color, sex, or national origin.[Emphasis

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[10]Joyce Gelb and Marian Lief Paly, Women and Public Policies, Rev. ed (Princeton, NJ: Princeton University Press: 1982), 93-128, passim.

[11]Congressional Record, 93d Cong., 2d Sess., Vol. 120, Pt. 6 (March 26, 1974), H8263.

added.]

Hence, Section 1701 (a) omits the word "sex" from its prohibitions, where Section 1701 (c) contains it. Such inconsistencies have only further clouded the question of whether or not publicly-funded single-sex K-12 education is allowable under federal law.

Where ambiguity exists in the language of Federal legislation and the Congressional intent is not clear, the courts have been left to determine what constitutes equality in education on the basis of sex.

Single-sex Education in the Courts

In recent years, the courts have played a role both in determining what is covered under Title IX, the areas where Title IX is not applicable, and the main issue of whether student's rights have been denied under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

In many early decisions affecting higher education, the courts upheld single-sex institutions by either implicitly or explicitly finding that the exclusionary admissions policies of state-supported universities were constitutional as long as comparable educational opportunities were available in other institutions available to students of the opposite sex. In short, a "separate but equal" doctrine was relied upon to justify the legality of sex-segregation in education.

In *Heaton v. Bristol* (Tex. Ct. App. 1958), a Texas Court of Civil Appeals reversed a trial court opinion which had held that the exclusionary admissions policy directed at female students of Texas A & M University violated both the Texas Constitution and the Equal Protection Clause of the Fourteenth Amendment. The appellate court, in reversing the lower court decision, ruled that a women's college, which offered the same or similar training as the all-male state school from which the female plaintiff was denied admission, existed for women to attend. The plaintiff therefore could not argue that she had been denied an equal opportunity to pursue the educational degree she desired. The court in its somewhat specious reliance upon this "separate but equal" analysis failed to consider that the "women's college," while having comparable degree opportunities, was in all probability a far less prestigious university than Texas A & M.

The issue of single-sex enrollment in higher education reached the Supreme Court in the case of *Williams v. McNair* (401 U.S. 951, 1971). The Federal district court had denied male applicants admission to a state-supported female college where there existed, aside from the normal co-educational facilities, an all-male college that granted degrees in engineering and gave military training, as well as a female college which was designed for the education of "young ladies."[12] In this case, the court relied upon the expert testimony of educators who expressed their support of single-sex education based on the belief that it could "advance the

[12] 316 F. Supp. 134.

quality and effectiveness" of instruction.[13] The court held that a rational justification for gender-based distinction existed, stating that "...flexibility and diversity in educational methods, when not tainted with racial overtones, often are both desirable and beneficial: they should be encouraged and not condemned."[14] The court's finding maintained a distinct differentiation between the standard by which gender-based discrimination in education is judged and the far stricter scrutiny applied to cases of discrimination based on race.

Vorcheimer v. School District of Philadelphia (430 U.S. 703, 1977) was the first case to reach the Supreme Court regarding single-sex education in a public secondary school. In this case, the Third Circuit Court of Appeals upheld, and an equally divided Supreme Court summarily affirmed, a dual single-sex high school system. A limited number of single-sex high schools were created, apart from the regular co-educational high schools. In these single-sex schools, enrollment was voluntary and not assigned. These single-sex schools were designed to have high admission standards and to offer only college preparatory courses. The female plaintiff who was denied admission to an all-male high school filed a class action suit. The appeals court overturned the trial court's ruling that the dual school system violated the Equal Protection Clause of the Fourteenth Amendment. The appeals court held that Title IX and the EEOA did not apply directly to primary and secondary single-sex education. The court found that the plaintiff's desire to enroll in the all-male high school was not based upon allegations that she was deprived of a "substantially equal" education but rather that she wished to enroll in the all-boys school primarily "because of its academic reputation...."[15] The appeals court specifically noted the lower court's finding that both schools were comparable in quality, academic standing and prestige. In regard to the intermediate level of scrutiny applied to gender-based classifications, the court noted that the district had met an "important governmental objective" (that of best educating its students) and that the classification worked to achieve that objective. Because the Supreme Court handed-down a four-to-four decision (one justice recused), the decision of the appeals court was automatically affirmed.

Garret v. Board of Education (E.D. Mich. 1991) is the most recent case to rule on the scope of Title IX and the EEOA as it pertains to the legality of single-sex education for grades K-12. The issue in *Garret* related to the Board of Education's plan to open in Detroit three male academies, initially serving approximately 250 boys from kindergarten through the eighth grade. No similar plan existed for the creation of girls' academies. The male academies were intended to address the plight of inner-city males. The Michigan Federal District Court ruled that the female plaintiff's equal protection rights under the Fourteenth Amendment had been denied and that the scheme did not meet the intermediate scrutiny test for gender-based classifications: even if it is assumed that the male academies did serve an important governmental objective, the school board failed to show that the male academies were substantially related to that objective. Specifically, the court found that "there is no evidence that the educational system is failing urban males because females attend schools

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[13] Id. at 137.

[14] Id. at 138.

[15] 532 F.2d at 882.

with males. In fact, the educational system is also failing females."[16] The court relied most substantially on the Michigan School Code to divine its opinion. Section 380.1146 of the Michigan State School Code of 1976 provides: "A separate school or department shall not be kept for a person on account of race, color or sex."[17] The court only looked to Title IX itself in an attempt to distinguish between a "traditionally single-sex school" which is exempt from Title IX's provisions and a newly established single-sex school, which may not be. The court also relied upon an advisory from the Office of Civil Rights of the U.S. Department of Education, which stated that "all-male public elementary and secondary school programs violate Title IX."[18] (This contradicts the 1977 finding in *Vorcheimer*, and the court's reading of Title IX and the EEOA in that case).

The fact that there is such a small body of law in this area, coupled with the problem that existing cases are both narrowly tailored and conflicting in outcome, makes the legalities of single -sex education ripe for future court battles. In essence, the courts have yet to issue a broad-reaching ruling as to whether the admissions policies of public primary and secondary single-sex education are now covered under Title IX, or whether single-sex educational schemes, in their various incarnations, violate individuals' Fourteenth Amendment rights.

The Danforth Amendment

Title IX was brought back into the public arena in August 1994, when Senator John C. Danforth (R-MO) proposed to amend Title IX during Senate debate on S. 1513, Improving America's Schools Act. This amendment, the Educational Opportunity Demonstration Program, would have allowed the establishment of ten school programs to demonstrate alternatives to co-education. The amendment would have granted discretion to the Secretary of Education to waive Title IX of the Education Act Amendments. Successful applicants under these provisions would then have been allowed to establish single-sex demonstration programs on a voluntary basis. These programs would be targeted to low-income, educationally disadvantaged students. The accepted schools would be required to offer single-sex classes for girls and boys as well as co-ed classes. Parents of children enrolled in such schools who did not want their children in single-sex classes would have the option of exempting their children from such classes.[19]

During Senate debate on this amendment, Danforth argued that "for kids who go to private schools, their parents all over this country have the option to send their children to co-ed or single-sex schools. For some children, co-education is the best thing in the eyes of the parents and for some parents of boys and some parents of girls, single-sex education is the

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[16] 775 F. Supp. at 1008.

[17] MICH. COMP. LAWS @ 380.1146 (1981).

[18] 775 F. Supp. 1004, 1009.

[19] Congressional Record, 103d Cong., 2d Sess., Vol. 140, No. 103 (August 1, 1994), S10163 - S10165.

best thing for those kids."[20] Danforth's amendment would have afforded legal protection to school districts which in the past had faced legal barriers hindering their attempts at single-sex education.[21]

In addition to the Detroit and Philadelphia schools mentioned above, districts in Milwaukee (WI), Miami (FL), Baltimore (MD), Rochester (NY), Ventura County (CA), Aurora (NY), and Presque Isle (ME), have all experimented with single-sex education. In Rochester, a principal started single-sex classes in 1989 in the Dr. Martin Luther King, Jr., Elementary School, in which the student body is 97 percent minority (African-American and Latino) and almost entirely low-income. The school operated this way for four years before the district and state stopped the practice and transferred the principal to another school in order to avoid public controversy. The principal stated that she was able to operate the classes for those four years because she "kept a real low profile."[22] In Philadelphia, where ten years ago a lawsuit forced the city to admit girls to previously all-boys Central High School, the principal of Robert Fulton Elementary School recently set up a second-grade class for boys only. The principal stated that she organized the class at the teacher's request, although she realized the vulnerable nature of such an action. "Really, I guess it's against the law. But I wasn't trying to break the law...I'm sure once this gets out, someone will come and disband it."[23]

Although some school districts which are establishing single-sex schools or classes have been ordered to discontinue such practices because of the questionable legalities of such actions, there are schools which have not yet faced similar restraints. In Baltimore, the principal of the Robert W. Coleman elementary school began single-sex classes five years ago. Initially, only some of the elementary school's classes were segregated by gender; in September 1993, all of the classes became single-sex. Surprisingly, although the administration of the Coleman School in Baltimore has not tried to keep a low profile, it has not been subjected to legal challenges other schools have faced. In Baltimore, the idea of segregating students by gender has not generated significant controversy and presently three other elementary schools in the city are experimenting with the idea. Although, in reality, the Coleman School could be sued at any time, it appears that the strong support of Baltimore's Mayor has convinced the American Civil Liberties Union to refrain from suing the school.[24]

In addition to segregating classes by sex to benefit boys, several programs have sprung up in classrooms around the country to 'help' girls. Public schools in Ventura County, Aurora,

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[20] Ibid., S10165.

[21] Ibid., S10165.

[22] J. Scott, "Boys Only: Separate But Equal?" Los Angeles Times, 15 January 1994, p. A1.

[23] Ibid., p. A1.

[24] Congressional Record, 103d Cong., 2d Sess., (August 1, 1994), S10166; S. Estrich, "Single-sex Education Deserves a Real Chance," USA Today, 14 September 1994, p. A11; T. Poor, "Schools Try Same-sex Classrooms," St. Louis-Post, 7 August 1994, p. A1.

and Presque Isle are presently experimenting with all-girl classes in math and science. In California, the Ventura Unified School District board agreed to allow two of its schools to run experimental programs in all-girl math classes. Although these programs are in direct violation of Title IX they have not yet been required to cease operations.[25] During Senate debate on the Danforth Amendment, Senator Danforth stressed the furtive existence of these single-sex programs, especially in regard to the African-American community. "... There is an interest in single-sex schooling among the African-American community, [as] evidenced by the fact that all-boys classes are being held quietly around the country, mostly in inner cities. These programs are going on in near secrecy for fear of discovery by lawyers and government officials intent on shutting them down in the name of quality."[26]

Although many Senators applauded Danforth for his continued interest in and commitment to advancing the academic achievement of young Americans, some were concerned that this amendment might have negative implications for sex discrimination and anti-segregation laws as well as for general civil rights provisions. Senator Edward M. Kennedy (D-MA) voiced his concern over the implications the amendment might have in furthering segregation. Kennedy stated that S.1513 already contained programs which addressed the issues of effective gender equity policies and practice at all educational levels. Such programs included assistance to educational agencies for the implementation of policies and practice complying with the Title IX program, and training for teachers, counselors, administrators and other school personnel in gender-equitable teaching and learning practices.

Senator Carol Moseley-Braun (D-IL) strongly opposed the amendment, arguing that it would be a major step backward in terms of gender equity. In voicing her opposition to the Danforth amendment, Moseley-Braun noted that "it could create unconstitutional discrimination on the basis of sex by allowing local school districts to waive Title IX and other important civil rights statues."[27] She went on to say that the amendment was sending the wrong message to the nation's educators and administrators by suggesting that "complex educational problems faced by young people in disadvantaged communities can be solved by segregating groups of students from one another."[28] Moseley-Braun echoed the concerns of many women and civil rights groups including the American Association of University Women (AAUW), the National Council of La Raza, the American Civil Liberties Union, the Anti-Defamation League, the National Association for the Advancement of Colored People, and the National Organization of Women, all of which opposed the Danforth Amendment.[29]

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[25]M. Davis, "West Ventura County Focus: Study Targets School Gender Segregation," Los Angeles Times, 20 December 1993, p. B2; Estrich, p. A11.

[26]Congressional Record, S10165.

[27] Ibid., S10173.

[28]Ibid., S10173

[29]S. Eckel, "Same Sex Classes; We May Hurt Girls by Banning Boy-free Zones," The Phoenix Gazette, 8 November 1994, p. B13.

Other than some senators, representatives of public interest groups also voiced their concerns about the Danforth amendment. Both Michael Lieberman of the Anti-Defamation League and Ellen Vargas of the National Women's Law Center were troubled that the Danforth amendment sought a waiver of Title IX, rather than an allowance within the law. Vargas said, "Title IX permits sex-conscious programming where it serves a specific purpose -- to compensate for an historic disadvantage or underrepresentation."[30] Amy Swauger of the AAUW stated that the AAUW, while it did not object to experimenting with single-gender classes, did not like the civil rights waiver. "Our belief is that it sets an extremely dangerous precedent. We don't want to go back to a day of separate but equal educational opportunity. We have civil rights laws for a reason. There's no good reason for waiving them."[31]

Despite the concerns of certain Senators and some of the public interest lobbyists, the Danforth Amendment was passed in the Senate by a vote of 66 to 33. The House companion legislation (H.R. 6), however, did not contain a similar provision. In September 1994, during the House-Senate Conference on the education re-authorization bill, Danforth attempted to convince conferees of the benefits of his provision. He argued that the demonstration projects, allowable under his amendment, would provide the educational community and lawmakers with future data on the effectiveness of single-gender education. But Representative William Ford (D-MI), Chairman of the House Education and Labor Committee, argued against the amendment, saying that it would require the U.S. Department of Education to waive civil rights laws on equal treatment of women. "You can't fool around with women's civil rights in this country. It would be an interesting and devastating signal to send."[32] Conferees subsequently stripped the Danforth Amendment from the final version of the bill.[33]

Conclusion

The merits of single-sex education continue to be debated in both the legislative and judicial branches of government. As the controversy over the recent Danforth amendment indicates, the division among advocates and opponents has added to the ambiguity of Title IX. How will this ambiguity be resolved? Will it occur in the legislature? Or will it require a measure of judicial activism. Recent legislative and judicial action indicate that this debate will not be resolved in the near future. Perhaps it will be left up to the local school districts to take the initiative; experimentation of this kind has already emerged throughout the country with mixed results.

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[30]Ibid., B13

[31]Poor, A1.

[32]R. Wells, "Funding Formula Compromise Holding Up Conferees," Congressional Quarterly, vol. 52, no.37 (24 September 1994): 2691-2692.

[33]The bill, as passed, was a re-authorization of the 1965 Elementary and Secondary Education Act.

Results in Brief

Informants in the workshop project answered questions posed by the student interviewers. Six questions were posed of the informants, and their answers are summarized on the following pages of this report.

Question 1 *Do you think single-sex public education is beneficial for students in grades K-12?*

The overwhelming majority of informants expressed their belief in some pedagogical benefits of single-sex public education in grades K-12. Some of these benefits include the use of different teaching styles designed to match alleged gender-based differences in learning, the building of self-esteem, the curbing of disruption, and the provision of same-gender role-models. However, the informants were quick to say that their support of single-sex education depended on the setting, the recipient of the single-sex instruction and the compensatory nature of the instruction. In other words, informants do see some advantages of single-sex settings, particularly for girls or minority students who have historically been denied adequate or equal instruction.

At the same time, the majority of informants expressed grave concerns that the pedagogical benefits are outweighed by several factors, including:

- Wide-ranging implications of any type of segregation;
- A reinforcement of traditional gender stereotypes and a lowering of self-esteem, when the single sex education is based on a "single-sided deficit model;" and
- The well-documented concern that single-sex instruction often results in unequal resource distribution between the sexes.

A few informants believed that there were no pedagogical benefits inherent in single-sex education. They argue that the benefits do not come from gender-based classification, but rather from innovative teaching methods and classroom structures that are being utilized in single-sex environments, particularly in classes of girls and minority males. Many informants simply saw single-sex education as a "quick fix" to the escalating problems surrounding a lack of resources in the public education system.

The informants' general impressions of this issue can be summarized as follows: they believe that positive methods being used in single-sex environments should be transported to co-educational settings.

Question 2 *Is public K-12 single-sex education more likely to produce equal outcomes?*

Many informants equivocated in answer to this question. In general, they found that equal outcomes probably had more to do with teaching style, school environment and, the

provision of resources than they did to gender-based classification.

Informants who believed single-sex education would produce more equal outcomes cited the pedagogical benefits outlined above. At the same time, however, these individuals did not necessarily believe that single-sex instruction should constitute the totality of a student's educational experience. Most thought that such instruction should be part of a student's overall educational career.

Those informants who were deeply skeptical of the equalizing benefits of primary and secondary single-sex education cited the following concerns:

- Having experienced only "gendered" environments (i.e., nurturing for girls and "command and control" for boys), both sexes are unprepared to cope with real-life interaction. In particular, such environments may reproduce gender-based stereotypes which perpetuate inequality;
- Differences in curriculum and teaching styles may reinforce stereotypes; and
- Single-sex classroom situations, as stated above, often result in an unequal distribution of resources which may continue to limit the development of girls.

In sum, many informants were hesitant to endorse either single-sex or co-education as a direct means to more equality of opportunity. If they could create, however, an environment which they believe would contribute directly to aims of social equality, the majority of them would prefer a reconfiguration of co-educational environments to include better teacher training, a revamped curriculum and reformed school governance.

Question 3 ***Should Federal law support public K-12 single-sex or co-education as a matter of public policy? In what form should it be supported? Should Title IX be amended?***

Before answering this question, many of the informants wanted to make clear that decisions about school curriculum, except where they directly relate to civil rights infractions, are generally the province of state and local school boards and districts, not the Federal government.

The legal scholars, in particular, were also quick to note that the current state of statutory, regulatory and constitutional law in this area is muddled. The lack of clarity on this issue, they argue, dates back to the Congressional debates on Title IX and the Equal Educational Opportunities Act and has continued through the Department of Education's promulgation and enforcement of regulations as well as the interpretation of equal protection in this area by the courts. These ambiguities, they say, have led to significant confusion over the current state of Federal law in this area, even among legal scholars themselves. (See the "Statutory, Regulatory and Case Law Analysis" for a full treatment of this issue.)

Nearly all the informants, even those who supported a provision for single-sex education under Federal law, believe that such a provision should not be carried out through an amendment to Title IX. Informants across the board argued that the civil rights protections

won under Title IX were too hard fought to touch, especially at this time when conservative viewpoints are well represented in the composition of both Congress and the Supreme Court. Many informants even went so far as to say that a demonstration project, like the one proposed by Senator John Danforth (R-MO) in 1992, should not be brought about through any kind of civil rights waiver. They contended that such a demonstration might be achieved through simple legislation.

Those informants, who believed that Title IX already broadly prohibits single-sex education in primary and secondary publicly-funded institutions and who hope that this prohibition would continue, supported better enforcement of Department of Education regulations. They also expressed a long term desire for Congressional clarification.

The few informants who believed that Federal law should permit single-sex education felt that it should be made available, as it is to students with the means to attend private single-sex schools, but only within the context of a choice of either co-education or single-sex education.

Question 4 ***Do you believe that the strict standard of scrutiny applied to race-based classifications should be extended to gender?***

[Note: This question was used for two reasons. First, it was asked in order to ascertain whether informants generally supported the notion of full equality of opportunity between the sexes. The members of the workshop wanted to ensure that the reasons that informants might support single-sex education were not to explicitly reinforce traditional stereotypes which have allegedly served to disadvantage women. Second, for those informants who might think that the admissions policies of publicly-funded K-12 schools are not covered under Title IX, but are nonetheless applicable under the Equal Protection Clause of the U. S. Constitution, this question tries to discern through the informants' answers a particular strategic approach.]

All informants expressed support for the idea of a heightened standard of scrutiny for gender, though most conceded that with the failures of the Equal Rights Amendment in the 1970s and 1980s, that it might not happen in their lifetimes. One informant noted that a heightened standard of scrutiny would not necessarily mean that single-sex educational arrangements would fail to withstand Constitutional challenge. She argued that such a heightening is not necessarily "outcome determinative," though she, of course, supported it nonetheless.

Perhaps the most striking element of the support for a heightened scrutiny, by those who favored a provision for single-sex education, was the lack of recognition by them that such action might well prohibit single-sex segregation. "Separate but equal" strategies might not pass muster in the courts, as has been the case with race-based classifications.

Question 5 ***Can you comment on the changing trend toward single-sex public K-12 education? What accounts for the trend?***

The informants felt that the renewed interest in public K-12 single-sex education could be attributed to the following factors, including:

- Some research findings indicating that girls and boys might have different learning styles;
- The failure of the current public education system and general lack of resources, which have caused parents, administrators and government officials to look for "quick fixes;" and
- The entire "school choice" issue, which has encouraged local school districts to envision educational reform in ways they have not previously examined.

One informant, a women's rights advocate, argued that the women's movement itself had contributed significantly toward the trend. She conceded, however, that most feminist leaders would strongly disagree. She believed that the legal, political and social equality gains of the last twenty years have now encouraged a move toward a more "substantive equality." In other words, while the women's movement had, in the past, argued that equality flowed from "equal treatment," a more substantive equality of opportunity might require treating boys and girls differently from each other.

Question 6 ***If single-sex education for grades K-12 were allowed, what would be the public policy implications?***

Interestingly enough, though the informants were told that this project was about the "public policy implications" of single-sex public K-12 education, few really addressed this question.

The informants did, however, discuss some social policy issues in their answers to the first and second questions. They pointed to both pedagogical and psychological factors which would ultimately affect educational and social outcomes for boys and girls. Most argued that the pedagogical benefits of single-sex education which might serve to close the gap of educational disadvantage would be outweighed by the broad effects of segregation, a possible reinforcement of sex-based stereotypes, and a lowering of self-esteem. They also argued that where resource allocations have been unequal in sex-segregated school environments, which has traditionally been the case, they have served to further exacerbate the inequality.

A few other public policy implications were addressed indirectly by the informants. In the fourth question, informants illuminated the notion that without a clarification in the current state of federal law, it is difficult to be precise in predicting the public policy implications of specific single-sex schemes.

Additionally, the legal experts argued that legally allowing single-sex educational

environments might produce a "slippery slope" effect in other areas of gender-related law. In other words, if the law were to allow for different treatment of boys and girls in education, it might serve as precedent for divergent treatment of men and women in other aspects of life. On the other hand, a few informants thought that the substantial sex equality gains made in the courts in the 1970s would make it quite difficult for the tide to be turned back.

Implications of the Study

The Workshop's study did more to frame the parameters of the debate regarding single-sex versus co-education than it did to disclose clear answers about the public policy implications of one or the other side of the debate. It is noteworthy that both the perceived supporters and opponents of single-sex education proved to be markedly less dogmatic than the research team initially thought. The attitudes of the informants point to the complexity of the issue itself as well as the fact that publicly funded single-sex education is a new area for policy study with which individuals and organizations are still grappling, and about which distinct positions are still being developed.

Nonetheless, in a time where the public educational system is perceived as engineering more failures than successes, a number of the informants believed that the potential pedagogical benefits of single-sex K-12 public education might be meritorious of further study. However, such study should be limited in scope (in order to avoid too vast an array of policy implications); it should occur within the context of choice for either co-education or single-sex education; and it should not depend on any sort of civil rights waiver. A demonstration project of single-sex education might be sponsored through a simple legislative initiative that does not interfere with Title IX. Of course, some individuals continue to argue that the pedagogical benefits in already existing private single-sex schools can be studied. This course obviates the necessity of demonstrating single-sex education in public schools, thus obviating all of the legal ramifications.

Broadly speaking, the informants voiced strong hesitations about public K-12 single-sex education, whether totally actualized in the schools or tried as an experimental demonstration. The majority of informants kept coming back to the notion that an overhaul of co-education is the best answer. As a consequence, the workshop informants recommend an application of some of the perceived benefits in single-sex classrooms to co-educational environments. Such benefits include better teacher training, a revamping of curriculum and a reform of school governance structures, and they should be applicable for both boys and girls in co-educational environments.

With respect to current policy considerations, the informants urge a stricter enforcement of Title IX, to preserve and further aims of gender equity. The haphazard enforcement, caused by both a lack of resources and shifting political winds serves only to obfuscate the issues surrounding single-sex education. To eliminate any lack of clarity inherent in the regulations, the Department of Education's Office of Civil Rights should issue policy guidance as soon as possible. Where Title IX is not applicable, gender-equality advocates should continue to be vigilant in their pursuit of litigation that would clarify the courts' position on these matters. Some of the informants believed that in the future, perhaps when a sitting Congress voiced opposition to civil rights initiatives, education and gender equality advocates alike will be able to seek clarification of Congressional intent.

Though the informants did address certain social and legal policy considerations in this report, there are indeed others which were not covered. A number of salient public policy

implications would require attention if the Federal government were to allow for single-sex educational environments in primary and secondary education. A series of critical questions would arise involving legal and financial ramifications, as well as the proper jurisdictional role of Federal, state and local governments.

- What type of legislative action would be required to implement single-sex education? Is it possible to allow single-sex education without a waiver of civil rights protections?
- Would the tax status of publicly funded single-sex schools be affected by the non tax-exempt status of single-sex organizations?
- What is the role of the various government entities in the creation of single-sex schools? What are the associated oversight and enforcement issues?
- How can government entities ensure that there would be an equal distribution of resources between all-girl and all-boy environments?

Additional Views from the Workshop's Participants

In drawing the workshop devoted to single-sex education to its close, the students who participated in this project believe that it would be helpful to the client to indicate some of their own thoughts about the validity and usefulness of their work. As has been said, the study reached no definitive conclusion; as such, it constitutes at best a jumping off point for further investigation. There are several reasons for this finding.

First, none of the informants or the student participants was able to ascertain reliably the extent of single-sex activities in the nation's publicly supported schools. What data exist are derived from newspaper clippings, anecdotes, or reports of isolated court cases, but this information cannot replace the kind of thorough assessment of the single-sex phenomenon that might have been provided by a nationwide assessment or inventory of single-sex educational activities. Secondly, in the majority of cases, the informants themselves lacked a clear perception of the requirements of the Federal statutes affecting single-sex education and gender discrimination in the schools. As a result of these two rather limiting factors, the task of gleaning public policy implications from these interviews became not only somewhat difficult but also premature.

If a subsequent study were to be built on this effort, it might be helpful to narrow the base of the interview pool and to restrict the parameters of the questions to purely policy issues. The response of the scholars who have conducted research in education helps, of course, to shape public opinion about the pedagogic advantages or disadvantages of single-sex education, but their perceptions did not add very much to the public policy debate. Very few informants were knowledgeable about the comparative long-range economic implications for students enrolled in either single-sex or co-educational settings, and almost no one was able to tackle the question of Federal tax exemption for schools that were not in compliance with existing Federal laws.

There is a possibility that the inventory of single-sex activities may result indirectly from the mandate facing the U.S. Department of Education to furnish the President and the Congress a report on the status of educational equity for girls and women. This report, required by the reauthorization of the Women's Educational Equity Act, is due on January 1, 1999. Inquiries made of the Department as to the extent or status of this report did not yield much information aside from the fact that the funding levels for this study will be determined in the FY 1997 departmental budget, which will be prepared a few months from now. In all probability, the preparation of this report will be carried out under contract to the Department, but at this writing the scope of the report, its research parameters, and the amount of its financial support are all matters for conjecture.

More to the point in following up the present study, the students feel that a more precise identification of informants might have proved more helpful. Dual expertise, and in some cases multiple expertise, seems to be a requirement. Individuals, cognizant of issues that overlap, such as education and the law or gender equity and education, need to be identified and their opinions probed. By narrowing the focus of the study to a solely public policy perspective and by questioning fewer, but perhaps more knowledgeable, informants, a more sophisticated approach to the research agenda of single-sex education might have been achieved. Such a statement, however, is not meant to delimit the findings of the present study: in framing the dimensions of what constitutes a new field of scrutiny in the public policy arena, first steps are important. The student participants in the Columbia University Graduate Program in Public Policy and Administration, as well as their faculty advisor, feel privileged that they were asked to illuminate some of the dimensions of this significant but complex subject.

Group A: Academics and Researchers

Informants

Carol Gilligan, Professor of Education, Harvard University
Valerie Lee, School of Education, University of Michigan
Manning Marable, Director of the Institute for Research in African-American Studies, Columbia University
Diane Pollard, Associate Professor, Department of Educational Psychology School of Education, University of Wisconsin at Milwaukee
Cornelius Riordan, Professor of Sociology, Providence College

Question 1

Do you think single-sex public education is beneficial for students in grades K-12?

All of the informants believe that single-sex education could be beneficial to students in grades K to 12 under certain conditions and only for specific groups of children. None of the informants would support a blanket policy of single-sex education for everyone. They stated that there are situations where it is useful to group students by their gender. One informant answered that the benefits of single-sex education depend on the psychological and social development of the children. In communities where the social structure and stability have eroded, schools could provide a site of intervention. In addition, children growing up in these environments could find that single-sex institutions provide a greater framework for learning. Manning Marable stated that his "preference would be to create a framework where co-education is the norm, but there are many cases where a single-sex environment may be beneficial and may be the best model for education within a particular community. It has to be approached not abstractly but, concretely, looking at each special case in a way that recognizes the cultural, educational, social, and class factors that comprise the materiality of that community." In the opinion of some informants, single-sex schools could make a difference if the single-sex education were able to draw out the full capacity of students. According to Carol Gilligan, "If only being with girls strengthens girls' voices and provides resonance and if girls feel like what they are saying is being heard, then single-sex education would make a difference." One informant cited two research projects involving single-sex after school programs. In both projects, the students were shown to be much less anxious in the single-sex environment.

Two informants mentioned the importance of the way in which single-sex education is handled. One noted that single-sex education can perpetuate sex-stereotypes for both females and males. Supporting this was another researcher who said that sexism is found in both co-educational and single-sex schools. Three of the informants discussed the potential for co-education to "short-change" girls. The environment of single-sex schools often benefits minority groups and girls, because these schools are more likely to focus on the issues specific to those who are not a part of the historically dominant group in the public sphere, that is, white men. According to most of the informants white males have the advantage in co-educational schools because of the historical and social forces in our society. In support of this, Gilligan stated that "a school is an acoustical atmosphere that is tuned to the civilization, which is male dominated and therefore the school environment is tuned to boys. Co-education will make it even harder for girls to hear themselves and not hear their voices as distorted or irrelevant."

Question 2 ***Is public K-12 single-sex education or co-education more likely to produce equal outcomes?***

The point that single-sex education is not a long-term solution to achieving equality in education was emphasized by all informants. Specifically, Cornelius Riordan felt that "in many years...when there is gender equality in this world and there are no more single-sex schools, everybody will do better." Most informants believe that single-sex education is a short-term solution that can further the goals of women and minorities. One researcher was concerned about the problems arising from the new trend of single-sex specific classes for girls. Valerie Lee stated that the reasons for the establishment of single-sex classes in math and science is not because girls cannot maintain the same pace as boys in these subjects. "The big issue is whether the purpose of single-sex schools for girls is to make them nicer places. This suggests that girls need help and support. It assumes that girls need a warm and fuzzy environment to learn." The informants were in agreement that gender inequity issues cannot be solved by designing all-female schools and classes. Lee believes that one does not "create a gender-equitable world by separation." Single-sex classes or schools are short-term solutions to the overriding inequality found in many classrooms that are based on a one-sided deficit model. One of the researchers commented that in order to eliminate inequality in education, the priorities of the culture must be changed and any such change will involve education. Another informant stated that the success of girls' schools rests on the fact that such schools are focused on answering questions concerning how best to educate girls. If co-educational schools did the same thing, the same positive results would ensue.

2a.) Within a co-educational environment what can be done to create more equal outcomes?

Two informants discussed the important role that teachers play in this area both as instructors and role models in terms of behavior with peers and students. They stated that teachers need to recognize that discrimination occurring in many classrooms is often rooted in a teacher's performance. One informant suggested the establishment of centers for teaching excellence in public schools that would focus on greater gender sensitivity. One proposed idea was to videotape teaching performances where teachers could observe how they responded to student's questions; or to discuss problems in grading discrimination based on a student's race or gender. Pollard felt that many of her present students do not believe that gender discrimination in classrooms is still a problem. She believes that because these students do not notice the subtle nuances that are often found in classrooms, just increasing the level of awareness would be a good starting point. One researcher discussed the success of some schools due to their organizational components. According to Lee, "The good schools are the ones that have positive effects regardless of whether they are for women or men. They are communities." Another issue that was raised in response to this question was the involvement of family. In schools where the people, parents, and students care about the school, it has been found that students will perform better.

Question 3 ***Should Federal law support public K-12 single-sex education or co-education as a matter of public policy? In what form should it be supported? Should Title IX be amended?***

The responses to this question varied somewhat. Some of the researchers believed that the use of legislation in this matter would not be effective. One informant stated that this was an area in which the legislation has no import. She believes that if the ultimate goal is educational equity, then legislation is not effective. Similarly, Marable did not think that the Federal government should play a role in the development of single-sex institutions.

Although he would support the development of such institutions, Marable thinks that they should be supported privately. "In a sexist society for the state to support single-sex institutions, unless there is a hegemony of the dominant ideology, there is a very great risk that single-sex institutions can become separate and unequal. I would worry about dominant sexist ideology influencing the character of such institutions, how they would be funded, and how their graduates would be perceived within the job market." In addition, this informant indicated that he would support grant money to fund a program such as the one proposed by Senator Danforth, although basically he does not think that the government should be involved. One informant felt that relaxing the requirement of Title IX for five years, as proposed by Senator Danforth, would be very beneficial. He believed that five years constitutes the barest minimum of time for these programs to provide needed research data. In addition, he thought that there was no basis for restricting full and open access to single-sex schools since the data consistently showed positive results for disadvantaged students in such settings. In the opinion of one informant, there are presently enough existing single-sex schools available if research were the main purpose of Senator Danforth's proposal; hence there was no need to waive Title IX.

Question 4 ***Do you believe that the strict standard of scrutiny applied to race-based classifications should be extended to gender?***

Two informants felt that gender inequality should definitely be scrutinized as closely as racial inequity.

Question 5 ***Can you comment on the changing trend toward single-sex public K-12 education? What accounts for the trend?***

Gilligan stated that the creation of an educational and psychological model for girls has increased educators' attention to these issues. "Starting with girls voices and experiences has raised new questions for single-sex education and co-education, but by and large only single-sex girls' schools have taken the lead on these issues." Two informants mentioned the overall decline in the number of single-sex schools (primarily in higher education), and both believed that this decline will continue. According to Riordan, "co-education is deeply embedded in our culture in the same way that capitalism is. If you talk about single-sex education, it's like talking about Communism in the 1950s. You're talking about something that has no chance of flourishing. The notion of single-sex schools flourishing is absurd. [Single-sex education] is always going to be a small part for the next two centuries."

Question 6 ***If single-sex education for grades K-12 were allowed, what would be the public policy implications?***

The informants discussed these implications within social and psychological terms. [See summaries of question 1 and question 2.]

Group B: Government Officials and Legislators

Informants:

Laura Efurd, Legislative Aide to Representative Patsy Mink
Sue Klein, Ed.D, Senior Research Associate, Office of Educational Research and Improvement, U.S. Department of Education
Alexander Russo, Legislative Aide to Senator Dianne Feinstein

The informants in this group provided insight into the area of Federally funded single-sex education from a governmental and political perspective. Ms. Klein specifically stated that her responses would be based upon her personal opinions as a researcher and would not necessarily reflect the position of the U.S. Department of Education.

Question 1 ***Do you think single-sex public education is beneficial for students in grades K-12?***

The informants concurred that single-sex education and its benefits relied on an "it depends" situation. All felt that co-educational environments have been proven to benefit both genders. However, the informants found that, where justified, single-sex education environments depend on personal preferences. Some people may prefer single-sex education and therefore view it as a more beneficial learning environment for girls. Sue Klein verbalized the informants' common views relating to the benefits of single-sex education, commenting, "It might be a valuable option for some girls but I'm not sure if it should be an option funded with public funds unless we make provisions of separate but equal or really closely monitor." While informants may have recognized the benefits of single-sex education, they did not necessarily believe it should be publicly funded.

Question 2 ***Is public K-12 single-sex education or co-education more likely to produce equal outcomes?***

The informants felt that further studies need to be completed. This would require data from private schools, however, and the results would be difficult to translate into the public sphere. Current research, the informants noted, has found that single-sex environments may encourage gender stereotypes in the case of both boys and girls.

Question 3 ***Should Federal law support public K-12 single-sex education or co-education as a matter of public policy? In what form should it be supported? Should Title IX be amended?*** The informants agreed that single-sex education should not be supported as a matter of public policy. They felt that Title IX legislation could be interpreted to allow for single-sex education in some cases, depending on justification. According to Klein, some individuals are interpreting the law as a method to alleviate past discrimination as opposed to achieving equal outcomes. She felt "... that [those individuals] should consider that the educational justifications must really justify equal outcomes rather than just making amends for past discrimination."

Concerning the legal ramifications of varying interpretations of Title IX, the informants spoke in detail about definitions of equity, but without providing any consensus. One informant felt that the law was clear cut, while another stated that interpretations can vary.

No consensus was achieved on how single-sex education should be supported. While the stance of the legislative aide to the House member was clear cut (single-sex education should not be supported with Federal funds), the informant from the Department of Education felt that single-sex education could be justified based upon interpretation of Title IX, and issues concerned with achieving equity.

The informants felt strongly that Title IX should not be amended to allow for single-sex education in public schools. Any tampering with civil rights legislation must be approached with caution, and the potential to erode the protections that have been achieved via Title IX always exits.

The legislation appears to all informants to provide enough leeway to achieve the goals of equity. In other words, experimental classes could be offered under the current mandate.

3b.) Given the current political climate, could the Danforth amendment be brought up again, do you believe it is something that will be brought up in the future? What do you think about Danforth's failed amendment?

The informants felt that the Danforth amendment was inadequate for a number of reasons. If Title IX were amended, the legislation would be weakened. Laura Efurd pointed out that "...any attempt to weaken it [Title IX] will start us on the road to where people could say that we think we need a school for just boys and they can pour all of this money into it and not leave any for the girls. That's been our history unfortunately."

The Danforth amendment was also criticized because it did not provide for any specific research to be done on the effectiveness of single-sex education.

One informant believed the movement to make changes in Title IX is not primarily focused on single-sex education. Efurd felt that athletic equity issues are of more concern at the moment. Discussions surrounding the validity of women's sports will encompass the greatest political battle related to this issue, specifically because as Efurd said, "to put it frankly, football coaches have a lot of political power. We'll see a Danforth amendment again some time."

Another informant felt the issues addressed by Title IX were most closely related to the subject of school choice, since Federally funded vouchers could potentially be used to purchase single-sex, private or parochial school education. Although this informant had a high opinion of single-sex education, he did not feel that such an educational environment needs Federal funding. According to Russo, "... while it [single-sex education] worked well for her [Senator Feinstein] and works well for many as an important choice in many areas, putting the Federal stamp on it was [at the time of the Danforth amendment] not necessarily wise or necessary."

Above all, the informants believed that the co-educational environment of public schools, benefitting from the integration of gender and race, warrants more attention. Educators need to develop ways to work more effectively within the co-educational system. Jumping to single-sex education simply becomes an easy way out of a complex and difficult issue.

Question 4 ***Do you believe that the strict standard of scrutiny applied to race-based classifications should be extended to gender?***

The informants agreed that there is an integral link between the educational issues surrounding gender and racial equity. Because women are members of every racial minority, it would be impossible to differentiate between the effects of their dual status. Concern was also expressed about the different lenses used to view gender and racial civil rights issues. As Ms. Efurd stated, "it's amazing, but if anyone tried to amend a civil rights law based on race or talked about segregating children by race in a school, I think the concern is raised a hundred-fold ..., I think girls deserve exactly the same protections as racial minorities."

Question 5 ***Can you comment on the changing trend toward single-sex public K-12 education? What accounts for the trend?***

The informants believed the movement towards single-sex education had increased. One reason suggested was the need for special treatment in those cases where past discrimination had proven so harmful (particularly in minority male communities where the dropout rate is very high). The common examples offered were the charter schools and the all male academies in Baltimore, Milwaukee, Detroit and Philadelphia.

One informant believed the proliferation of single-sex schemes is the result of attempts to address the failure of the public school system This informant felt that in response to the general decline of the public education system, educators and parents are desperate to try anything that might improve the quality of their children's education.

Question 6 ***If single-sex education for grades K-12 were allowed, what would be the public policy implications?***

Pointing to higher test scores for girls and increased female college attendance, informants feel women have benefited from Title IX . However, informants stressed that despite these advances, parity between the sexes has not yet been reached. The informants mentioned concerns over continued gender discrimination and inequity, specifically regrading the issues of comparable worth and the glass ceiling in the job market. Efurd stated, "I think the tendency is to think that laws like Title IX have lived out their usefulness. I think the minute that we start thinking that way is the time when those protections will be eroded. We will move backwards to a time when men and women were separated."

Programs like Operation Smart of Girls, Inc., and afterschool math and science activities, have shown that single-sex education does work for some girls. Klein advocated using such models on a wider basis. According to Klein, "One advantage sometimes of single-sex education very specifically is that you often get insight on what are beneficial instruction strategies for them [girls] and often those instructional strategies are different for others [boys]." Therefore not only do girls benefit from the results, but the programs provide strategies to teach boys as well.

In the last analysis, these informants are primarily opposed to mandated single-sex education as a matter of public policy. One informant did feel that in some cases for some individuals, single-sex education provides more benefits and better outcomes. On the whole, however, the optimal situation the application of the best aspects of single-sex education to a co-educational setting.

Group C: Public Interest Groups and Educational Associations

Informants:

Michael Casserly, Executive Director, Council of the Great City Schools
Basir Mchaur, Director, Medgar Evers Program
Frank Newman, President, Education Commission of the States
Heather Johnston Nicholson, Director of Research and Policy, Girls, Inc.
Whitney Ransome, Executive Director, National Coalition of Girls Schools
Bernice Sandler, National Association for Women in Education
Isabel Stewart, Executive Director, Girls, Inc.
Rosie Torres, Public Information Director, ASPIRA Association
Walteen Truely, President/CEO, Women and Philanthropy

Question 1 ***Do you think single-sex public education is beneficial for students in grades K-12?***

The overwhelming majority of informants believe that single-sex education is beneficial in at least some circumstances. Most feel that it is beneficial for girls, but some express doubts over its value for boys. Some informants did express their belief that a single-sex environment might be beneficial for minority males. Only one informant believes that separating students by gender is never a good idea. One informant recommends single-sex groupings only for a fixed number of years as one phase of a child's education, but never for the totality of the educational experience.

The reasons for support of single-sex education differed. All informants who supported all-girls schools noted the need to counter the effects of discrimination and socialization that tends to steer girls away from certain subjects. Heather Johnston Nicholson remarked that "there's overwhelming evidence that girls [do tend] to get discriminated against and that there are reasons for having... special opportunities for girls that [overcome] the effects of discrimination [so they] become strong, smart women." Whitney Ransome believed that boys and girls have different "ways of solving problems," and that single-sex education could meet those specific needs. She said that her organization is "looking for a climate where girls' and women's ways of doing things and solving problems and getting the job done [are appreciated]." Others explicitly rejected the view that there are different learning styles, but felt that all-girls schools may be appropriate for compensatory, affirmative reasons.

Walteen Truely, the informant who opposed single-sex education, felt that it is detrimental because "students need to interact with each other across gender."

1a.) Do you feel that there are any situations in which single-sex education is (or is not) beneficial?

Some informants commented that research has shown that single-sex education can have a negative effect on boys. According to Frank Newman, "One of the benefits of co-education is the fact that girls have a civilizing influence on boys." Others remarked that if single-sex education represented the totality of a child's educational experience, the results could be negative, since youngsters would not be prepared for an integrated world.

1b.) Do you feel that there are any situations in which co-education is (or is not) beneficial?
Truely felt that coeducation is not beneficial when "[it] is sexist in other words, when it favors one sex to another."

Question 2 ***Is public K-12 single-sex education or co-education more likely to produce equal outcomes?***
Those individuals who support public single-sex education support the option of single-sex schools as a pragmatic alternative to producing more equal, if not totally equal, outcomes. Ransome believed that we must recognize that "equality doesn't necessarily mean the same."

Some doubt that equal outcomes will be achieved, because they don't think resources will be allocated equally. Bernice Sandler remarked that "we've had a long history of having [publicly supported single-sex education] in the past, and every time there was a single-sex school for boys and a single-sex school for girls, the boys' school was larger, the boys' school had more equipment, it had more teachers, it had more courses, it just had better stuff in it."

Some were also concerned that single-sex classes would stereotype students by placing them in gender-specific roles or that differences in the learning ability of boys and girls would be assumed.

2a.) Within a co-educational environment, what can be (or has been) done to create more equal outcomes?

A need for improved teacher training was expressed by some informants. The dynamics between teachers and students should also be examined more closely in order to determine their impact on student achievement. Additionally, an increased sensitivity to the needs of specific communities, in terms of curricular content, was mentioned by informants. Many informants spoke about the need to encourage girls to pursue non-traditional fields more aggressively. However, when speaking of African-American male schools, Basir Mchaur said, "I doubt that there is anything that can be done in a co-educational environment that will lead to equal outcomes."

2b.) How significant is gender as opposed to other variables in producing equal outcomes? (i.e., the effect of curriculum, school finance, geography, race...)
Opinions on this question varied widely. Some of those interviewed felt that gender is very significant, because basic differences in the development and socialization of boys and girls affect outcomes. One informant noted that in the future females of color will be a plurality, and if they are not educated with sensitivity to gender there will be a problem in society. Another informant felt that gender is only one of many important variables, while others believe that gender is a secondary issue. School finance and geography, in the opinion of these informants, affect quality more directly.

Question 3 ***Should Federal law support public K-12 single-sex education as a matter of public policy? In what form should it be supported? Should Title IX be amended?***
Opinions varied greatly in response to the first question -- some supported the idea of single-sex education enthusiastically, while others were adamantly opposed. Supporters cited evidence of the beneficial effects of single-sex education for girls, or expressed their opinion about its potential benefits for African-American males. They noted the need for choice and experimentation in order to move towards improvement within the educational system at-

large. Newman said that public policy makers should be able to determine when certain categories of people need more resources than others. He believes that "communities should be able to spend more money on those who have the most critical needs." Concern existed among informants that if critical needs were not addressed, society would ultimately bear the cost.

Those who supported single-sex education as a matter of public policy felt that it should be an option, not a mandate.

Several informants expressed extreme reservations about changing Title IX, fearing that it would set a dangerous precedent for civil rights law. Others objected in general terms to the idea of a public policy of segregation by gender. Sandler argued, "If you [amended Title IX] you are going to allow people to make distinctions based on sex rather than a more rational way of classifying people." Two informants specifically mentioned their concerns about easing civil rights within the current political environment. Michael Casserly said, "I'd be very reluctant if not downright opposed to amending Title IX... part of my opposition [is based on] the political atmosphere here in Washington... To open [the issue of Title IX] would be to invite the dismantlement of so much of [its] original intent...Once the political conservatives that now dominate Congress got a hold of this kind of issue... it would be so divisive and so destructive, both in terms of sex and race, that the whole thing would be counterproductive."

Question 4 ***Do you believe that the strict standard of scrutiny applied to race-based classifications should be extended to gender?***

Informants generally felt that race and gender should be treated equally. Truely commented that "in a way they do in the sense that Title IX mirrors Title IV [of the Civil Rights Act], which was originally conceived as protecting racial groups."

Question 5 ***Can you comment on the changing trend toward single-sex public K-12 education? What accounts for the trend?***

Most informants recognized that there has been a renewed interest in single-sex education. One informant said that an increased awareness of the distinct needs of boys and girls has lead to a trend towards single-sex education. Ransome believed that new research by Carol Gilligan, the AAUW, David and Myra Sadker and others have lead to increased support for single-sex education in the past five years. A third informant believed that the although there has not been a general trend towards single-sex education, there has been an increased interest in funding single-sex education. Truely commented that "interest in funding single-sex education has increased. There is an increased interest in funding formulas that are short of systemic change to change outcomes."

5a.) What are the assumptions being made about the role and impact of women and girls (men and boys) as both teachers and students in the school environment?

Several informants talked about the need for same-sex teachers as mentors and role models. Mchaur said, "Young boys, particularly African-American boys, cannot develop and socialize properly in classes that are headed by women -- they need the male role models that they lack in their family lives." Another informant noted, however, that it is important for youngsters to see different types of teachers, for example, women math and science teachers.

Some informants commented that the interaction in co-ed classrooms differs from that in single-sex classrooms, that boys demand more attention, or teachers give them more attention. Ransome argued that "there is no question that girls, when they see other girls in a single-sex classroom speaking out, getting involved, getting their hands on equipment and asking questions and getting enthusiastic about it, that seeing their own female peers achieving and being excited about math and science, it sets a different type of tone."

5b.) How are societal attitudes of male supremacy treated in an all male environment? How would the curriculum of single-sex schools or programs address the role and impact of women in society?

Mchaur said that in African-American male schools, women are not considered inferior -- the schools support the notion of respect for African-American women. Casserly commented that "whether kids are in a mixed setting or a homogenous setting, [the] curriculum ought to be available in both that works towards tolerance, acceptance, information about other groups to break down stereotypes. I would like to think -- although it might just be wishful thinking -- that you could do it in both settings. But I would go so far as to say that [the benefits of such a curriculum would be] equally true [in] suburban settings that are all white. There's more than enough room for those kids in those schools to have instruction along the same lines, because I would consider [their students] as isolated as often as the larger society considers kids in the cities."

5c.) Will all female classes adequately prepare girls to work in an integrated workforce?

Informants who supported single-sex education were not concerned about its effects on young women entering the workforce. Most believed that it would in fact increase their self-confidence and make them more viable as future leaders. Newman remarked, "The reality is that no child grows up in a single-sex world, so that even if girls attend all-girls schools they still rub shoulders with boys all the time." Ransome argued, "Girls are never going to enter those co-ed work-forces in math, science, and technology, unless they get the kind of background and training and confidence, and sense of ability in these areas early on through school."

Some individuals, who support single-sex education only in some situations, expressed some reservations. Rosie Torres remarked, "I do not believe in going to the extreme in having all-female institutions throughout their whole educational career...[Girls] need to have an opportunity to be with the boys in the classroom to challenge the boys as well." Similarly, Casserly commented, "I am not in favor of having it their total experience, because they have to move into a world with people that are not of the same language, race, sex, orientation, religion, or anything else."

5d.) How do you decide which groups deserve separate schools?

Informants agree that this decision is extremely complex. One informant suggested that school districts select a group every two years and target them for improvement, including greater resources. Casserly said, "That is probably the hardest and stickiest question of all to answer, and the toughest policy to balance...I think setting up schools by whatever group, whether it's by sexual orientation, by sex, by race, by language, where a child's complete educational experience is devoted or contained within such an isolated setting almost exclusively, to that extent my hunch is that it's divisive, and bordering on dangerous

experience."

Question 6 ***If single-sex education for grades K-12 were allowed, what would be the public policy implications?***

6a.) Many people can afford to send their children to single-sex schools, shouldn't people of all incomes have the same option in public schools?
Informants agreed that public schools serve a special function in society, but differed as to the nature of that role. One informant said that children in public schools are the ones who need this option the most. Others believed that there is a special obligation of public schools to offer equal resources and not discriminate. Casserly commented that the schools should respond to the needs of the communities. He said, "In a public school setting, if there is a sufficient number of people who want a single-sex environment for their kids, I would hope that the system itself would find some way to accommodate them." Sandler objected to the idea of publicly supported single-sex education, noting the special obligations of public institutions. She argued, "It's the public institutions that I think have a legal and moral obligation to be equal, and not to be separate but equal. It didn't work with blacks, and it really doesn't work with gender either, when we're talking about public institutions."

6b.) Do you think an option of single-sex education would increase the number of parents electing to send their children to public schools?
Informants who answered this question generally said no. They believe that the central concerns for parents who choose to enter their children in private schools are safety and quality of education, not a single-sex environment. However, one informant believes that single-sex education might affect those concerns indirectly, and thus might eventually increase public school enrollment. Casserly commented, "I am a big fan of public schools diversifying their offerings, their size, their structure, and diversifying themselves in all kinds of ways. Not just to attract people away from private schools, but that's not the object of public schools. But in order to meet incredible diversity of needs that the kids happen to have, and if that happens to attract people away from the private schools, so be it."

Group D: Practicing Lawyers and Legal Scholars

Informants:

Joan E. Bertin, Program on Gender, Science and Law, Columbia University School of Public Health,
Elizabeth Catlin, Staff Attorney, National Women's Law Center
Sara Mandelbaum, Director, ACLU Women's Rights Project
Deborah L. Rhode, Stanford University School of Law and Former Director of the Stanford Institute for Research on Women and Gender
Leslie Wolfe, President, Center for Women's Policy Studies

Five legal scholars (four attorneys and one participant who currently works with attorneys on legal issues) agreed to be interviewed on the legal issues surrounding single-sex public education for grades K through 12. From the outset the individuals who comprise the final legal-interview group, apart from their legal expertise in this area, are noted particularly for their work in feminist issues. Feminist legal organizations are still developing their official platform on single-sex education. For the most part, these organizations are opposed to the concept of single-sex educational schemes, classes and schools. Their opposition is based on the belief that such educational environments prove harmful to girls.
Attempts were made to garner the opinions of legal experts who work on behalf of proponents of single-sex schemes. Due to conflicting professional obligations, however, these individuals were unable to lend their insights.

Single-sex education remains the subject of contentious ideological debate. The precise legality of single-sex education for grades K through 12 continues to be an equally debated and contentious issue for legal scholars. For the most part, the debate stems from the inherent legislative ambiguity of Title IX, as well as the relatively small body of significant case law surrounding the legality per se of single-sex education for grades K though 12 in publicly supported schools. Among the legal experts interviewed, one clear finding emerged and that was the lack of a uniform understanding or interpretation of Title IX itself. It appears that from a legal perspective the issue of single-sex education transcends a purely statutory application. According to the legal experts interviewed, this issue is largely viewed as a constitutional matter.

Should it be public policy for the United States to support single-sex education in publicly supported schools? If this small but nonetheless significant sampling of the legal community is considered, single-sex education is viewed as suspect, not only because it fails to pass the Equal Protection standards of the Constitution, but also because it may not be the most appropriate remedy for the problems of public education.

Question 1 ***Do you think single-sex public education is beneficial for students in grades K-12?***

On a purely pedagogical level, informants were open to a discussion of possible benefits, although informant Leslie Wolfe was particularly adamant about her objection to single-sex education. In general, however, the informants were skeptical about it because they felt it did not adequately address the larger problems of education; in other words, the remedy did not address the problem. Elizabeth Catlin remarked, "I think that people often confuse the

issue, and think of the single-sex component as causational, making the outcomes better." The informants pointed out that more attention should be paid to smaller class size, better teachers and more creative methods of teaching to resolve some of the problems plaguing American public education.

Question 2 ***Is public K-12 single-sex education or co-education more likely to produce equal outcomes?***

The informants were in agreement on this question. Neither single-sex schemes nor co-education appears to provide the environment that would necessarily guarantee equal outcomes. Joan Bertin emphasized the need to look at the individual setting: "In each setting the teachers, principals and administrators are responsible to make sure that students in those classrooms are receiving educational instruction that is equivalent and meets their needs." She continued by adding that, in her opinion, single-sex education reinforced negative stereotypes, the dichotomization of which was the essence of discrimination. Additionally, the informants pointed out the importance of monitoring discrimination within a co-educational setting. Deborah Rhode, citing the "Hawthorne Effect," argued that where attention is focused on a given group, results were forthcoming without necessarily changing the other conditions: "It's been said that where there has been increased attention focused on these single-sex environments, there has been an increase in motivation, and you confound the actual effects of the particular pedagogical initiatives."

2a.) What do you perceive to be current Federal law regarding public single-sex K-12 schools? How about classes? Are the current U.S. Department of Education regulations consistent with Title IX and the Equal Educational Opportunities Act [EEOA] with respect to public single-sex primary and secondary admissions policies? Classes?

Answers to this question illustrate the wide-range of interpretation of the law governing single-sex education in the United States, as well as a divergent understanding of Title IX itself. On the one hand, Wolfe believes that single-sex K-12 education would be a blanket violation of Title IX, while other experts, such as Catlin, argue that current Federal law and Department of Education Office of Civil Rights regulations allow single-sex public K-12 schools. Some American legal experts claim that the window for single-sex schemes under Title IX appears to open, with the burden of proving some compensatory or remedial justification by the single-sex institution itself. This burden appears to be a heavy one. Experts such as Bertin, on the other hand, argue that single-sex education is strictly a constitutional issue. The application of Title IX to single-sex schemes, in her opinion, is a moot one, given the controlling effect of prevailing Equal Protection standards. According to Catlin, however, constitutional law remains unclear and she cited the Vorcheimer case where a "separate but equal" scheme was upheld in the face of an equal protection claim.

2b.) Have the courts, in their interpretation of Title IX and the EEOA been consistent on these issues? Has the Supreme Court made any clear interpretation?

Informants generally felt that the Supreme Court had not explicitly addressed the issue of single-sex education for grades K-12. In addition, cases in the lower courts have been so narrowly defined that it has been difficult to glean anything substantive from them in terms of a clear judicial signal.

2c.) If the law is ambiguous, how do you think the ambiguity will be addressed if the

proliferation continues? If the law is clear, why are single-sex environments proliferating? Will Congress have to act and either amend Title IX or pass another law clarifying its intentions? Is the Supreme Court likely to make a broad gesture of judicial activism, or will it continue to avoid broad interpretation?

Most of the informants felt the proliferation was primarily due to the absence of strong Federal law; the programs and schools would exist as long as they did not attract attention from the appropriate authorities. Regarding the proliferation of all-male African American academies, Wolfe offered this explanation: "One of the reasons these inner-city academies are proliferating, and I think it is quite racist and sexist, is because there is this idea that the only way African-American boys can be educated is if they are off in a little ghetto by themselves." Sara Mandelbaum offered an additional hypothesis as to the proliferation of single-sex schemes citing the "popular" scientific trend emphasizing the "differences" between the sexes. "It's very fashionable to talk about how boys and girls learn differently, have different styles and need different types of nurturing."

Addressing the possibility of a Congressional amendment of Title IX, most of the informants believed it was within the realm of possibility. However, the case law currently does not exist, and at present there appears to be no active litigation. The failure of an established clear doctrine is the strongest impediment to further litigation in this area. Two informants, commenting on the new political make-up of the Congress, expressed doubt that Title IX would be revisited in any serious way given the general aversion to laws that resemble "special treatment."

2d.) If a Federal ERA was passed, or if the standard of scrutiny for gender classifications were raised from an intermediate to strict standard, what effect, if any, do you believe either of these would have on single-sex K-12?

Opinion was split as to the ultimate effect. Some, such as Mandelbaum of the ACLU, expressed the belief that women's organizations would be in a much better position to apply the reasoning behind Brown v. Board of Education, which made any form of segregation suspect. Others, such as Rhode and Catlin, expressed reservations regarding the "outcome determinative" nature of scrutiny. Rhode remarked, "While I think it makes it harder, obviously for facially separate classifications to pass muster, the experience with state equal rights constitutions has shown that there isn't necessarily any connection between a higher standard of review and the outcomes...I think there is a fair amount of play in how courts read the evidence, and I think it's more the prism through which the courts view these things than the particular legal formulation that makes the difference." Catlin points out that the courts have found that Title IX is not co-extensive with equal protection; for Title IX cases a stricter scrutiny is exacted to begin with. In short, from her understanding of the law, issues that fall under Title IX are treated as strictly as are race-based classifications. Echoing Rhode's sentiments, Catlin expressed her belief that the nature of the particular suit would determine which scrutiny would be applied. Clearly, the ambiguity surrounding not only the legislative intent of Title IX but also the specific features of the statute itself are at the root of the discrepancies in legal opinions rendered by the informants.

Question 3

Should Federal law support public single-sex education or co-education as a matter of public policy? In what form should it be supported? Should Title IX be amended?

Most of the informants were opposed to Federal support of single-sex education as a matter of public policy. Of those interviewed, only Rhode expressed her support of experimentation in the area of single-sex classes in the hope that any lessons learned would

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be "exported" to a co-educational setting. In general, the informants articulated their strong opposition to any changes to existing Title IX protections. Additional regulations from the U.S. Department of Education could be the alternative to substitutions in or expansions of the specific features of Title IX.

3a.) What do you think about Danforth's failed amendment? Should we endeavor to examine the issue of single-sex education in a demonstration project?
The informants expressed an overwhelming opposition to any suspension of civil rights laws, veiled in the form of "demonstration projects." Bertin commented, "I don't think that calling something "experimental" gets around the provisions of Equal Protection." Catlin, recalling the schism between problem identification and appropriate remedy, suggested that Danforth erred in identifying the problem as Title IX, when the problem may stem from the lack of resources in the schools. She suggests that a research project without the waiver might be more suitable. Wolfe, on the other hand, suggested that legislatures abandon research in the area of single-sex education and provide demonstration projects in the area of a comprehensive educational equity plan. "We ought to start demonstrating whether we can transform our schools to be more equitable....to demonstrate the efficacy of segregation is unnecessary and dangerous."

Question 4 ***Do you believe that the strict standard of scrutiny applied to race-based classifications should be extended to gender?***
Informants overwhelmingly affirmed their support of this extension, expressing additionally that it was unlikely to occur any time soon. Once again, Rhode articulated that such a move would not necessarily be "outcome determinative."

4a.) How do you think the courts might consider the issue of both racial and gender classifications present in some of the schools, such as the all-male African-American inner-city academies?
Most informants agreed that both a race analysis and gender analysis would be conducted by the courts. Catlin expressed her strong doubt that these combination race and sex schemes could withstand either Title IX or Constitutional scrutiny. "I think they push too many buttons," she said. Informants noted that a heavy burden would lie with the particular institution to prove a legitimate state purpose.

Question 5 ***Can you comment on the changing trend toward single-sex public K-12 education? What accounts for the trend?***
Wolfe and Rhode attributed the resurgence of single-sex education to the general frustration of Americans with the current state of American education. "People are desperate for a solution, they can't come up with one, and there are so few resources," Rhode said. She asserted that single-sex education would at best serve as a short- term quick fix. On the other hand, due to financial constraints, Mandelbuam perceived a rising tide in favor of co-education. Catlin posited that the women's movement had unknowingly encouraged the trend toward single-sex education based on the drive for "substantive equality." "It's almost like gender equity is reasonably safe, so now we want to have 'the best.' The best might come in the form of a scheme which runs counter to men and women being treated exactly the same."

Question 6 ***If single-sex education for grades K-12 were allowed, what would be the public policy implications?***

Once again the difference between the pedagogical and the practical benefits emerged. There were those, such as Bertin, who clearly viewed single-sex education as threatening to the measures of social equality achieved by women. Others, such as Rhode, viewed the situation as having two possible outcomes: 1) reversion to gender stereotyping in the classroom; or 2) the development of educational initiatives that will produce strategies for co-education and that will produce the best outcomes for students of both sexes.

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Group B: Government Officials and Legislators

Efurd, Laura, Legislative Aide to Representative Patsy Mink (D-Hawaii), phone interview by Maria McCarthy, March 29, 1995.

Klein, Sue, Senior Research Associate, Office of Educational Research and Improvement, U.S. Department of Education, phone interview by Dolores Gascon, April 4, 1995.

Russo, Alexander, Legislative Aide to Senator Dianne Feinstein (D-California), phone interview by Maria McCarthy, March 10, 1995.

Group C: Public Interest Groups and Educational Associations

Casserly, Michael, Executive Director, Council of the Great City Schools, phone interview by Russ Finkelstein, March 23, 1995.

Mchaur, Basir, Director, Medgar Evers Program, interview by Berta Colon, New York, NY, March 22, 1995.

Newman, Frank, President, Education Commission of the States, phone interview by Berta Colon, March 16, 1995.

Nicholson, Heather Johnston, Director of Research and Policy, Girls, Inc., phone interview by Susan Vorsanger, March 31, 1995.

Ransome, Whitney, Executive Director, National Coalition of Girls Schools, phone interview by Susan Vorsanger, March 31, 1995.

Sandler, Bernice, National Association for Women in Education, phone interview by Susan Vorsanger, February 27, 1995.

Stewart, Isabel, Executive Director, Girls, Inc., interview by Susan Vorsanger, New York, NY, March 23, 1995.

Torres, Rosie, Public Information Director, ASPIRA Association, phone interview by Russ Finkelstein, March 31, 1995.

Truely, Walteen, President/CEO, Women and Philanthropy, interview by Berta Colon, New York, NY, March 24, 1995.

Group D: Practicing Lawyers and Legal Scholars

Bertin, Joan E., Program on Gender, Science and Law, Columbia University School of Public Health, interview by Frances Lee, New York, NY, March 17, 1995.

Catlin, Elizabeth, National Women's Law Center, phone interview by Amy Rutkin, March 10, 1995.

Mandelbaum, Sara, ACLU Women's Rights Project, phone interview by Frances Lee, April 6, 1995.

Rhode, Deborah L., Professor of Law, Stanford University School of Law, phone interview by Amy Rutkin, March 13, 1995.

Wolfe, Leslie, Center for Women's Policy Studies, phone interview by Amy Rutkin, March 9, 1995.

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Appendix A

Section-by-Section Analysis

Title IX of the Education Amendments of 1972

(P.L. 92-318)

TITLE IX -- PROHIBITION OF SEX DISCRIMINATION

Sex Discrimination Prohibited

Sec. 901. (a) This section prohibits discrimination on the basis of sex, under any education program or activity in the United States receiving Federal financial assistance. The following, however, are exempt from this provision:

(1) In regard to admissions to educational institutions, this section shall only apply to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education.

(2) In regard to admissions to educational institutions, this section postpones the effective dates of the prohibition during periods when an institution is changing from one-sex status to co-educational. Under this section all institutions are exempt for one year from date of enactment, and institutions undergoing transition are exempt for an additional six years.

(3) Exempts educational institutional institutions which are controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization.

(4) Exempts educational institutions whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine

(5) In regard to admissions, this section exempts public institutions of undergraduate higher education which traditionally and continually from their establishment have had policies of admitting only students of one sex.

(b) Nothing in the language of subsection (a) shall be interpreted to require preferential or disparate treatment of the members of one sex.

(c) Defines an educational institution to be: any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education. Additionally, a department of an educational institution which is an administratively separate unit is defined under this subsection to be an educational institution.

Federal Administrative Enforcement

Sec. 902. Requires each Federal agency which extends Federal financial assistance to issue implementing rules and regulations which must first be approved by the President. Compliance may be effected by funds termination or other means. Termination must be preceded by notice and opportunity for hearing, and a determination that voluntary compliance cannot be secured. The effect of termination of funds is limited to the particular entity and program in which such noncompliance has been found.

Judicial Review

Sec. 903. Any department or agency action taken pursuant to section 902 shall be subject to judicial review.

Prohibition Against Discrimination Against the Blind

Sec. 904. Prohibits discrimination against the blind in educational programs and activities. Specifically, it prohibits discrimination in admissions to any course of study by any education program or activity receiving Federal financial assistance. Nothing in this section may be construed to require an educational institution to provide any special services to such person because of his or her blindness or visual impairment.

Effect on Other Laws

Sec. 905. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

Amendments to Other Laws

Sec. 906. (a) Amends Title IV of the Civil Rights Act to include sex within the term desegregation , to enable the Attorney General to bring suit in discrimination cases.

(b) Amends Section 13 of the Fair Labor Standards Act by eliminating the present exemption of ind' iduals employed in executive, administrative, or professional capacity from the equal pay for equal work provisions. In addition, this section expands the definition of enterprise under the Fair Labor Standards Act to add preschool to the existing list of elementary or secondary schools as types of activities performed for a business purpose or engaged in commerce.

Interpretation With Respect to Living Facilities

Sec. 907. This section specifies that institutions may maintain separate living facilities on the basis of sex.

Appendix B

Contact was made by the interviewers with the following persons, who were unable to be interviewed.

Gordon Ambach, Executive Director, Council of Chief State School Officers

The Honorable Carol Moseley Braun, U.S. Senate (D-IL).

Don Cameron, Executive Director, National Education Association.

Dr. Gregory Campbell, President, National Association for Minorities in Engineering.

The Honorable John C. Danforth, formerly of the U.S. Senate (R-MO).

Joann Jacullo-Noto, Adjunct Associate Professor and Director of the Office of Teacher Education, Teachers College, Columbia University.

Norma Kantu, Office of Civil Rights, U.S. Department of Education.

The Honorable Edward M. Kennedy, U.S. Senate (D-MA).

Jill Miller, Executive Director, National Coalition for Women and Girls in Education.

Robert Patterson, Esq., former counsel for the Virginia Military Institute.

Isabelle Pinzler, U.S. Department of Justice.

David Price, Esq., former counsel for the Virginia Military Institute.

Diane Ravitch, Senior Researcher, Department of Education, New York University and former Assistant Secretary of Education under the Bush Administration.

The Honorable Kurt Schmoke, Mayor of the City of Baltimore.

Cinthia Shuman, Executive Director, National Center for Fair and Open Testing.

Jean Westphal, Director, Academy of Travel and Tourism.

Anne Marie Whittemore, Esq., former counsel for the Virginia Military Institute.